

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



ADVISORY OPINION NO. 222

This advisory opinion is in response to a letter requesting advice from the Ethics Commission as to whether the City and County of Honolulu can purchase artwork from City and County employees as part of the Art In City Buildings project.

The Commission understands the facts relative to this inquiry to be as follows:

As provided by ordinance, each year the City and County of Honolulu sets aside one percent of the appropriation for original construction of any City building for the acquisition of works of art. This is known as the Art In City Buildings program.

Site specific proposals for new City buildings are submitted by artists who have been screened on the basis of their portfolios. An Advisory Committee composed of the architect, two to four persons who will use the building, one or two community members, and one or two members of the Commission on Culture and the Arts recommends the artwork that should be purchased. The full Commission on Culture and the Arts then reviews the proposal and forwards recommendations with which it agrees to the Mayor. Final approval rests with the Mayor. The selection process cannot be described as a competitive bidding one.

The ethical question presented is whether the City and County of Honolulu is permitted to contract with any of its employees to provide artwork under the Art In City Buildings program, since such contracts are not based on a process of competitive bidding.

The general rule in relation to this question is found in the Revised Ordinances of Honolulu 1978 (1983 Ed.), Section 6-1.2(5), which states in pertinent part:

No officer or employee of the City...shall...[e]nter into any contract in behalf of the City with an officer or employee or with a business in which an officer or employee has a controlling or substantial interest, involving the furnishing of services, materials, supplies, and equipment **unless the contract is made after competitive bidding....** (emphasis added)

Based on the evidence presented, the Commission finds that the City and County of Honolulu cannot purchase artwork from City employees as part of the Art In City Buildings program.

Dated: November 12, 1992

JANE B. FELLMETH
Chair, Ethics Commission